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THE WHITE HOUSE
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CABINET AFFAIRS STAFFING MEMORANDUM

Date: 6/8/84 **Number:** 169005CA **Due By:** ____________

Subject: Cabinet Council on Natural Resources and Environment - Tuesday, June 12, 1984 - 10:00 a.m. - Roosevelt Room

	Action	FYI
ALL CABINET MEMBERS	☐	☐
Vice President	☑	☐
State	☑	☐
Treasury	☐	☑
Defense	☐	☑
Attorney General	☑	☐
Interior	☑	☐
Agriculture	☑	☐
Commerce	☑	☐
Labor	☐	☑
HHS	☐	☑
HUD	☑	☐
Transportation	☑	☐
Energy	☑	☐
Education	☐	☑
Counsellor	☑	☐
~~OMB~~	☐	☑
CIA	☐	☑
UN	☐	☑
USTR	☐	☑
GSA	☐	☐
EPA	☑	☐
OPM	☐	☐
VA	☐	☐
SBA	☐	☐

	Action	FYI
CEA	☑	☐
CEQ	☑	☐
OSTP	☐	☐
Baker	☑	☐
Deaver	☐	☑
Darman *(For WH Staffing)*	☑	☐
~~Jenkins~~ Chapman	☐	☑
Mc Farlane	☐	☑
Svahn	☑	☐
CCCT/Gunn	☐	☐
CCEA/Porter	☐	☐
CCFA/	☐	☐
CCHR/Simmons	☐	☐
CCLP/Uhlmann	☐	☐
CCMA/Bledsoe	☐	☐
CCNRE/Davis	☑	☐

REMARKS: The Cabinet Council on Natural Resources and Environment will meet on Tuesday, June 12, 1984 at 10:00 a.m. in the Roosevelt Room.

The agenda and background papers are attached.

RETURN TO:

☐ Craig L. Fuller
Assistant to the President
for Cabinet Affairs
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☐ Katherine Anderson
☐ Tom Gibson

☑ Don Clarey
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Associate Director
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THE WHITE HOUSE

WASHINGTON

June 6, 1984

MEMORANDUM FOR THE CABINET COUNCIL ON NATURAL RESOURCES AND ENVIRONMENT

FROM: RANDALL E. DAVIS, EXECUTIVE SECRETARY R.D.

SUBJECT: Outer Continental Shelf Revenue Sharing and Section 8(g) Litigation

INTRODUCTION:

Several legislative proposals involving oil leasing on the Outer Continental Shelf (OCS) and pending litigation seriously threaten to impair the Federal Government's ability to conduct activities, including lease sales, on the OCS.

These issues involve the Coastal Zone Management Act "consistency" requirements, OCS revenue sharing, litigation involving escrow funds for OCS Section 8(g) lands and lease sale moratoria. Some view these issues as interrelated problems that must be resolved in a comprehensive fashion in order to forge a new consensus in favor of Federal leasing activities. Others believe that each issue should be considered on its individual merit. A decision is required on the appropriate action that should be taken by the Administration to resolve the issues of Outer Continental Shelf Revenue Sharing and Section 8(g) escrow fund disbursement in an effort to mitigate adverse action against the OCS leasing program.

BACKGROUND:

A. OCS Revenue Sharing

The OCS revenue sharing issue has been considered by the Cabinet Council on Natural Resources and Environment on three prior occasions. In the prior meetings, a consensus was reached to oppose the principle of OCS revenue sharing. However, some members of the Cabinet Council strongly held the view that legislation would inevitably pass and that the Administration would be in a better position to influence the course of events if we were to indicate the type of legislation which would be minimally acceptable.

Legislation which would establish an OCS revenue sharing program with the states passed the House in September 1983 by a 301 to 93 vote. Similar legislation is currently pending in the Senate.

In the face of possibly successful congressional action, it is important that the Cabinet Council readdress this issue to protect the Administration's interest in off-shore oil and gas leasing.

The importance of OCS leasing to the Federal government cannot be overemphasized. Each year, $8 to $9 billion dollars of Federal revenues are generated from bonuses and royalties from OCS oil and gas leases. All states share in these Federal revenues since they go into the general fund of the Federal Treasury and are appropriated by Congress for the benefit of all Americans. Coastal states, affected by off-shore development and related on-shore support activities, absorb most uncompensated external costs (e.g., environmental risks, social costs) associated with development while also deriving economic benefits (e.g., jobs and tax revenues) stemming from development.

One of the primary arguments made for supporting revenue sharing is that it will ease the way for additional off-shore leasing and energy production, thus benefiting all Americans. Experts project that 85% of the undiscovered oil in the United States may come from Federally-owned resources, and that two-thirds of these resources may come from the OCS. Projected oil resources for the entire OCS, 44 billion barrels, are equivalent to 20 years of imports at 1981 rates; projected OCS natural gas resources could heat 23 million homes for 50 years.

Significant state opposition to the OCS program could result in fewer and smaller bids, sale delays, or stoppages. Proponents of revenue sharing believe it will help ameliorate state opposition.

From an economic perspective, coastal states enjoy substantial benefits from OCS oil and gas leasing and development. However, proponents of OCS revenue sharing believe states are entitled to greater monetary compensation and have garnered widespread support by structuring legislation which extends revenue sharing substantially beyond states affected by OCS activities. The bill provides a bonus for coastal zone management participation and would permit states to receive substantial payments even if they opposed or impeded OCS leasing. Cost of the bill could reach $300 million in FY 1985 and higher in the following years. The Office of Management and Budget has estimated that this legislation will add substantially to the deficit over the next five years. Although passage of legislation may ease some state opposition, many private and environmental groups will remain opposed to leasing under any circumstances and will still retain the power to attempt to impede leasing through litigation and other means.

B. Coastal Zone Management Act Amendments

Section 307(c)(1) of the Coastal Zone Management Act of 1972 requires each Federal agency conducting or supporting activities directly affecting the coastal zone to conduct or support those

activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs. In January, 1984, the Supreme Court, by a vote of 5 to 4, issued a major decision interpreting the consistency requirements of Section 307 (c)(1). The decision eliminated the states' ability to review and challenge OCS activity under Section 307 (c)(1). This decision created the possibility that the Federal government would take actions inconsistent with state coastal management objectives. Secretary Clark in a major speech shortly after the decision indicated that the Department of the Interior would work closely with the States at the pre-leasing and leasing stage under the Outer Continental Shelf Lands Act.

In response to the court opinion, two parallel actions are underway. The National Oceanic and Atmospheric Administration (NOAA) has issued an advance notice of proposed rule-making to implement the opinion and two bills, H.R.4589 and S.2324, have been introduced to reverse the decision and require consistency review and approval at the lease sale stage. This legislation would give coastal states virtual veto authority over Federal activities which may have an impact on coastal states, including off-shore leasing. The ultimate effect on the OCS leasing program may be to turn it into a program where every state affected must agree to the acreage to be offered.

Several Federal agencies besides the Department of the Interior have voiced concern regarding the impact such legislation would have on their programs: the Department of Transportation is concerned about its ability to provide air or ocean navigational aids and transportation corridors (air and sea); the Navy has stated that its ability to administer fundamental activities such as naval port visits, training in operation areas, amphibious landings on Federal reserves, and weapons testing would be subject to the control of State authorities; and the Department of Agriculture objects to the Forest Service timber sales, road construction, farm plans or individual crop insurance payments coming under State CZMA review. In addition, the Department of Justice is concerned that this legislation will cause the expenditure of large amounts of time and money in litigation.

The bill's supporters have framed the issue as one of States' rights and have obtained enough congressional support to make passage conceivable. Legislation has passed the Senate Commerce Committee and the House Merchant Marine and Fisheries Subcommittee on Oceanography. Further hearings on this issue are tentatively scheduled for the House Merchant Marine and Fisheries Committee on June 26, 1984.

C. Congressionally Mandated Moratoria

Since 1981, the Department of the Interior appropriations legislation has contained language which has prohibited oil and gas leasing in various off-shore regions of the United States. These moratoria have encompassed a total of 52.2 million acres and, once adopted, tend to be continued and expanded to include

additional areas. Once again, this years Department of the Interior appropriations legislation will likely contain moratoria on leasing in certain areas of the U.S.These moratoria substantially interfere with both the national goals of the OCS leasing program and with private sector exploration initiatives. It takes the industry approximately five years and a significant capital investment to plan exploration. Thus, a one year moratorium actually disrupts three to five years of investment planning and destroys needed stability in the OCS leasing program.

D. <u>Outer Continental Shelf Lands Act Section 8(g) Litigation</u>

Section 8(g) of the OCS Lands Act generally provides for a fair and equitable division of revenues generated by OCS oil and gas leases on tracts located within three miles of the state's submerged land boundaries and which contain oil or gas pools or fields underlying those boundaries. Under Section 8(g), the Secretary of the Interior and the Governor of the affected state must agree on what constitutes a fair and equitable division of revenues which may be generated by these lands.

With the exception of one small lease sale in Alaska, no agreement has ever been reached with respect to Section 8(g) revenues. Two states, Louisiana and Texas, have sued the Department of the Interior seeking a judicial definition of "fair and equitable." Although lower court rulings have preliminarily ruled on the scope of 8(g) in a manner partially adverse to government interests, they have not been entirely clear as to the proper resolution of this problem and may be reversed on appeal. Pending out of court settlement or, finally, court resolution, the revenues have been placed in escrow for seven states pursuant to Section 8(g) requirements. At the present time, the balance in escrow is over $5 billion.

Nonsettlement of the 8(g) issue recently threatened to block a lease sale in Louisiana. The State of Louisiana, previously a strong proponent of the Administration's offshore leasing program, sued the Secretary of the Interior to block the entire sale because of non-payment of 8(g) funds. However, allegations challenging the basic concepts of area wide leasing, the receipt of fair market value, and the equitable sharing of environmental risk provided the expressed basis for the Louisiana filing. It is likely that other States will submit similar legal challenges to prevent future sales unless they receive their "fair and equitable" share 8(g) revenue.

<u>DISCUSSION:</u>

On two of the four issues discussed above (moratoria and coastal zone management "consistency" requirements) the Administration has generally been opposed to congressional action. With respect to OCS revenue sharing and the 8(g) litigation issues, however,

there are differences of opinion within the Administration on the proper position to take.

All four issues can be viewed as interrelated and therefore it is necessary to have a comprehensive resolution of these issues in order to assure that we have a unified Federal policy and not undermine the viability of the OCS program.

OPTIONS:

Issue 1: Should the Administration take a new position with respect to the Section 8(g) litigation and attempt to settle the cases?

Option 1: Adopt a fixed or variable formula for payment of 8(g) revenues to states either through regulation, legislation, or negotiated settlement.

Pros:

- Could accelerate payments to states of funds currently held in escrow.
- Could reduce pressure for CZMA, revenue sharing, and moratoria legislation by increasing State support for leasing.
- Could reduce lawsuits by States which are generated as a result of 8(g) non-payment.
- A non-fixed formula would allow for differentiation among States based upon contribution to program.

Cons:

- Eliminates possibility of securing a favorable litigation remedy.
- Could be difficult to reach an agreement with all affected States.

Option 2: Continue legal position and let courts resolve issue.

Pros:

- A courts resolution may be more favorable to government than a negotiated settlement.
- Avoids difficult Federal/state negotiations.

Cons:

- o Delay is increasing pressure for CZMA, revenue sharing, and moratoria and causing attacks on area-wide leasing program. These items threaten entire leasing program.
- o Any savings from a litigated settlement may be exceeded by the decrease in leasing due to State action and Federal litigation expenses.
- o Solution imposed by a court may be unworkable administratively. Initial rulings in Texas and Louisiana were not totally favorable.

Issue 2: Should the Administration support some form of Outer Continental Shelf Revenue Sharing with the States?

Option 1: Support OCS revenue sharing legislation that has passed the House of Representatives and is currently pending in the Senate.

Pros:

- o May reduce opposition to OCS leasing, thus increasing net Federal revenues.
- o May reduce support for CZMA consistency legislation.
- o Advances federalism principals by providing some compensation to those who feel adversely affected by Federal OCS activity.

Cons:

- o May not reduce opposition or limit delay while costing $300 million or more per year.
- o Revenue goes to Great Lakes States and U.S. territories which have no OCS program, and incur no costs.
- o Justification for revenue sharing is questionable since economic benefits from leasing exceed costs.
- o Under the bill, funds are earmarked for categorical grant programs opposed by Administration. In addition, grants are substantially increased and the State match eliminated.
- o Money may go to local entities which oppose OCS program and may be used to oppose leasing and other Federal programs.

Option 2: Support an Administration bill with appropriate incentives and revenues designated for local communities most impacted by the OCS leasing program.

Pros:

- o Would improve our chances of securing improvements to the House passed bill which would have the affect of making the bill more acceptable.
- o May reduce opposition to OCS leasing, thus increasing net Federal revenues.
- o Advances federalism principals by providing some compensation to those who feel adversely affected by Federal OCS activities.
- o May reduce support in the Congress for CZMA consistency and moratoria legislation.

Cons:

- o It is unlikely that Congress would make changes in the legislation requested by the Administration.
- o Increases the likelihood of passage of legislation by demonstrating Administration support for the revenue sharing concept.
- o Will cost the Treasury $300 million per year, possibly more in later years.
- o May not significantly reduce opposition or delay.
- o May not reduce support for CZMA consistency and moratoria legislation.

Option 3: Continue to oppose OCS revenue sharing legislation.

Pros:

- o Legislation would cost over $300 million annually for the benefit of a few states.
- o Revenue sharing may not reduce local opposition or increase Federal OCS revenues because in places where opposition is strongest, suggested revenue amounts may not be enough to change peoples' minds.

Cons:

- o Legislation may very well pass the Congress this year and be presented to the President.
- o Lack of resolution of this issue may continue to cause the Administration trouble with supporters in Congress and the States.
- o Lack of progress on any OCS revenue sharing issues could lead to further efforts on the part of the States to disrupt or slow Federal OCS leasing activities.
- o Would encourage supporters of the CZMA consistency legislation to proceed ahead with this legislation.

Issue 3: Should the Administration support a joint resolution of the OCS revenue sharing and Section 8(g) litigation issues?

Option 1: Develop an Administration bill which would combine revenue sharing and a resolution of the 8(g) issue.

Pros

- o Represents a vehicle for solving both revenue sharing and 8(g) and may reduce support for CZMA consistency and moratoria.
- o Allows a direct relationship between 8(g) and revenue sharing payments and makes it easier to calculate total payment.
- o Directly connects revenues to leasing activity.
- o Achieves the benefits attributable to a legislative resolution to 8(g). Provides an opportunity for a consensus settlement.

Cons

- o Administration support for a bill may increase the likelihood of some unacceptable form of revenue sharing legislation.
- o There is no assurance that this would block CZMA and moratoria legislation.
- o May be impossible to apply retroactively to distribute escrow funds.

Option 2: Allow the Department of the Interior to negotiate a solution to 8(g) within certain Administration established guidelines either based on regulation or on a state-by-state basis and simultaneously develop an Administration bill for revenue sharing.

Pros

- Same pros as Issue I 8(g) litigation Option 1 and Issue II OCS revenue sharing Option 2 except that combined Option 2 would probably make it easier to deal with allocation of 8(g) escrow fund monies in the context of an overall revenue sharing program.

- Provides greater flexibility than legislative solution.

Cons

- Same Cons as Issue I Section 8(g) litigation Option 1 and OCS revenue sharing Option 2 except that revenue sharing bill may be more costly because of inability to balance 8(g) disbursement with revenue sharing.

Option 3: Continue present position on OCS revenue sharing and Section 8(g) litigation.

Pros

- Same pros as Issue I, Option 2 and Issue II, Option 3.

- Court settlement of 8(g) may result in lower short term costs.

- Revenue sharing and CZMA consistency legislation may not be presented to the President because of Congressional inaction.

Cons

- Same cons as Issue I, Option 2 and Issue II, Option 3.

- Lack of progress on any OCS revenue sharing concepts could encourage CZMA consistency and moratoria legislation.

- High risk of being unable to sustain our

present position on revenue sharing in the Congress, thus increasing the chances of a bad bill being presented to the President.

ESTIMATE OF ALLOCATION* UNDER FALL 1983 STATE "COMPROMISE" BILL

PERCENTAGE OF AMOUNT APPROPRIATED FOR BLOCK GRANTS

OCS REVENUE SHARING

STATE	%	$ (millions)
Alabama	3.5	10.5
Alaska	12.1	36.3
American Samoa	0.5	1.5
California	7.8	23.4
Connecticut	1.62	4.9
Delaware	1.62	4.0
Florida	7.2	21.6
Georgia	0.8	2.4
Guam	0.5	1.5
Hawaii	1.62	4.9
Illinois	0.2	0.6
Indiana	0.1	0.3
Louisiana	15.0	45.0
Maine	2.0	6.0
Maryland	3.1	9.3
Massachusetts	2.2	6.6
Michigan	3.8	11.4
Minnesota	0.1	0.3
Mississippi	2.9	8.7
New Jersey	3.1	9.3
New Hampshire	1.62	4.9
New York	4.5	13.5
North Carolina	2.6	7.8
Northern Marianas	0.5	1.5
Ohio	1.2	3.6
Oregon	1.62	4.9
Pennsylvania	1.62	4.9
Puerto Rico	1.62	4.9
Rhode Island	1.62	4.9
South Carolina	2.2	6.6
Texas	4.3	12.9
Virginia	3.0	9.0
Virgin Islands	0.5	1.5
Washington	1.7	5.1
Wisconsin	2.2	6.6
TOTALS:	100%	$ 300.00

OCS SECTION 8-g ESCROW FUNDS - BY STATE

As of March 31, 1984

Alabama	$ 142,382,917.20	
Alaska	126,246,824.59	(1)
California	1,233,405,704.08	(2)
Florida	93,033.54	
Louisiana	2,315,487,891.90	(3)
Mississippi	50,358,926.35	
Texas	1,096,418,850.68	
Total 8-g	$ 4,964,394,148.34	

(1) Does not include:	
Alaska section 7V BF-State	$ 175,998,504.60
Alaska section 7V BF-Federal	719,167,250.75
Alaska section 7V Shoreline disputes -- Sale 71	1,067,110.57
(2) Does not include:	
Non 8-g tracts in Sale 53A	4,291,403.78
(3) Does not include:	
Tract 95 of Sale 58 which is not 8-g per Solicitor	1,332,447.24
Grand Total--All Funds (a)	$ 5,866,250,865.28

(a) Includes earned interest, no accruals between investment dates.